

FILED

MAR 30 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

CHRISTOPHER PAUL HAWK,

Defendant - Appellant.

No. 04-30144

D.C. No. CR-01-05218-RJB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Argued and Submitted September 16, 2005
Seattle, Washington

Before: SCHROEDER, Chief Judge, ALARCON and LEAVY, Circuit Judges.

Appellant Christopher Paul Hawk entered a guilty plea to second degree murder in violation of 18 U.S.C. § 1111. At a sentencing hearing on June 14, 2004, the district court, applying the then mandatory sentencing guidelines, relied on facts never proven to a jury to increase Hawk's sentence.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Hawk appealed. In his briefs on appeal, Hawk argued his sentence should be vacated and remanded under Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 543 U.S. 220 (2005), because the district court erroneously applied the mandatory sentencing guidelines. All briefing in this appeal was completed before our court sitting en banc decided United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc).

At oral argument, Hawk's counsel informed us that after our decision in Ameline, she would no longer advise her client to seek a remand of his sentence. Hawk's counsel, however, had not had an opportunity to consult with Hawk on whether he agreed that he should not seek a remand of his sentence. We have not been notified that he seeks a remand.

The sentence is AFFIRMED.